

Additional/Revised Information

Agenda Item #	5
Meeting Date	October 15, 2007
Prepared By	Barbara B. Matthews City Manager
Approved By	

Discussion Item	Proposed Amendment to the Sanctuary Law
Additional/ Revised Information	<p>The following comments and information sheets have been received regarding the proposed amendment to the law:</p> <ul style="list-style-type: none"> • Memo from Gustavo Torres, Executive Director, CASA de Maryland • Fact Sheet on Human Rights in El Salvador, provided by Claudia Rodriguez • Information on 2006 events in Guatemala, provided by Claudia Rodriguez
Policy	N/A
Fiscal Impact	N/A
Attachments	As referenced above.
Recommendation	N/A
Special Consideration	

CASA of Maryland, Inc.

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To: Takoma Park City Council
From: Gustavo Torres, Executive Director, CASA de Maryland
Re: Proposed Changes to the Takoma Park Sanctuary Law
Date: October, 11, 2007

Thank you for the opportunity to share CASA of Maryland's position on the proposed changes to Takoma Park's Sanctuary Law. We appreciate the willingness on the part of the Mayor, Police Chief, Council Members and city employees to discuss this issue in an open and cooperative spirit. We commend Chief Ricucci's and the Police Department on their excellent work, including reducing the crime rate over the first six months of this year, and their commitment to the community and to public safety. We share this commitment. We do not, however, support any change to the Sanctuary Law to grant the police power to act on any civil immigration matter.

Takoma Park enacted the Sanctuary Law in 1985 and one of the cornerstones of that policy is that local police officers cannot enforce civil immigration law. The law has allowed the Takoma Park Police to focus on their critical duty of fighting crime while allowing the department to maintain a positive relationship with immigrant neighbors. While admittedly much has changed over the past twenty-two years, one thing has not: Takoma Park still believes that it is the role of the federal government to enforce immigration law and people should not be treated differently because of their immigration status. We believe that any changes to the Sanctuary Law should reinforce these beliefs and yet the proposed change is counter to this commitment.

We oppose granting the police power to act on any civil immigration matter for the following reasons:

1. Negative Impact on Public Safety

We share the police's concern about public safety, but public safety requires cooperation and not fear in the community. The police currently have the power to arrest individuals who have non-immigration related criminal warrants or who are suspected of criminal activity even if that person also has an immigration-related warrant in the NCIC database. This is good policy and we support it.

While the stated intent of the proposed change is to enhance the police's ability to keep Takoma Park safe, we believe such a change will have the opposite effect for the following reasons:

Lack of Understanding of the Policy

The distinction drawn between which types of immigrants will be allowed to be turned over to federal immigration officials will be meaningless for our immigrant neighbors. Regardless of how much public education we do, due to the anti-immigrant climate in many parts of our state and country, many law-abiding immigrants will avoid contact with the police.

Fear of the Police

Community oriented policing is based on establishing trust between the community and the police.¹ When immigrants start to see the police as ICE agents, they will stop talking to the police. We are seeing this in Montgomery County where the police are involved in enforcing immigration matters and immigrants have stopped reporting crimes, domestic violence, gang activity and more because they do not want to interact with the police. When people stop cooperating with the police, and 29% of Takoma Park residents are foreign born, safety of the entire community is compromised.

Inaccurate Information

When people think there is a possibility that they will be turned over the ICE, they are more likely to give the police false identification information. This makes the police's job more difficult as they can no longer trust that they are correctly identifying the people they are talking to. Additionally, the Migration Policy Institute (MPI) found there are many inaccuracies in the NCIC database – the database the police use to identify if a person is wanted on a civil immigration matter. In fact, from 2002 to 2004, 42% of the “hits” on the NCIC database could not be confirmed.

2. Distraction From the Police's Role: Protecting Public Safety Not Immigration Enforcement

The failure of the Federal Government to pass necessary immigration reforms has left the door open for state and local governments to enact their own laws concerning immigration issues. Takoma Park should not join this trend. We much call on our Federal Government to fix the broken immigration system but until that is done we should not start trying to address parts of this national issue on a local level. Additionally, we should not ask or allow city employees to do the job of federal immigration agents.

3. Immigration Status Should Not Be Used to Discriminate

We believe that all similarly situated people, in this case convicted felons who have served their time, should be treated equally. We should not treat a non-US citizen immigrant who has completed their sentence differently from a US citizen, immigrant or non-immigrant, who has completed their sentence.

We are supportive of changes to the Sanctuary Law which:

- Change the language to reflect the new names of federal agencies.
- Update the political and societal reasons for the law.
- Strengthen the confidentiality policy concerning a person's citizenship status.
- Restrict city employees from inquiring about, in any way, someone's citizenship status.
- Create a clause prohibiting discrimination based on citizenship.

¹ The Executive Committee of the International Association of Chiefs of Police stated in *Symbol of Fairness and Neutrality: Policing Diverse Communities in the 21st Century*:

Chiefs are experiencing a variety of immigration-driven conflicts. The most daunting is the tension between trust building and enforcement. Agencies are eager to build and sustain trust with immigrant groups and individuals. Their ability to do so is undermined when agencies must also honor federal/NCIC-filed civil detainers, which require arrest. *Symbol of Fairness and Neutrality: Policing Diverse Communities in the 21st Century*, The Executive Committee of the International Association of Chiefs of Police, July 2007, p. 8.

We appreciate the opportunity to work together to ensure that Takoma Park remains a community in which all residents both feel and are safe – from criminals and from the police. We encourage the City Council to continue to demonstrate that a city can both have a commitment to public safety and a commitment to equality. As the City Council acknowledged in 1985 when they passed the Sanctuary Law, we will be a stronger and safer community if we welcome immigrants and demonstrate with our policies and practices that they can feel safe to become involved members of our community. We trust that you will uphold this Takoma Park tradition of compassion and smart policy.

Thank you for your consideration.

Fact Sheet on Human Rights in El Salvador

Human Rights Situation

On July 2nd, a peaceful protest against water privatization in the small town of Suchitoto was repressed by the National Civil Police, Anti-riot police and the Police Response Group. They shot tear-gas and rubber bullets at the protesters who were members of community, faith-based and women's organizations. Fourteen people were detained, including members of the Association of Rural Communities for the Development of El Salvador (CRIPDES) who were on their way to the protest when they were detained. The community leaders are being prosecuted under the Special Law against Acts of Terrorism. Thanks to national and international pressure, the political prisoners were released on bail on July 24th but still face terrorist charges.

The Suchitoto events are evidence of the lack of rule of law and increasing violence in El Salvador in the recent years. This concern was expressed to Secretary of State Condoleezza Rice in a July 31st 2006 letter from 30 members of Congress after a clash between protestors and anti-riot police resulted in the death of two policemen. Recent reports from Human Rights organizations have confirmed this alarming situation. According to the Legal Department of the Archbishop in San Salvador, in 2006 3,928 people were murdered.¹ From the cases investigated by this office 24% of the homicides were attributed to gangs and common crime while 75% fit the profile of social "cleaning" and death squad types of crimes. The UNDP also confirmed the inefficiency of the Salvadoran State to investigate and prosecute crime. In a study done using a sample of 20% of the total homicides committed in 2005, the UNDP found that only 4% were prosecuted while 96% remain unsolved.²

Why Should Congress Care about Human Rights in El Salvador?

1. El Salvador has been granted \$460.94 million in development aid through the Millennium Challenge Corporation (MCC). Among the selective criteria for country eligibility are civil liberties, political rights, rule of law, voice and accountability, government effectiveness and control of corruption.³ Since the US Government is using taxpayer's money to provide this grant it has the obligation to monitor the recipient countries' fulfillment of the human rights indicators.
2. The US-sponsored International Law Enforcement Academy (ILEA) for Latin American was established in El Salvador and began operations in the fall of 2005. It is ironic that the State of Law in El Salvador keeps deteriorating despite the present of the academy, whose main goals are "to support the strengthening of penal justice institutions in Latin America, contributing to the consolidation of a State of Law, with respect to Human Rights and the Democratic Institutions and Law Enforcement"⁴
3. According to ex US Ambassador to El Salvador Douglas Barclay about 740 Salvadoran try to migrate to the US every day, about 94% immigrate to the country successfully. As long as the economic and political conditions in El Salvador continue to deteriorate, this trend is not likely to change.
4. As a close ally of President Bush, Salvadoran President Antonio Saca has sent Salvadoran troops to Iraq and passed an anti-terrorist law modeled after the Patriot Act. This Law is now being used to repress public dissent in violation of the 1992 Peace Accords which ended the Salvadoran Civil War.

¹ Tutela Legal del Arzobispado de El Salvador. 2006. La Violencia Homicida y Otros Patrones de Grave Afectación a los Derechos Humanos en El Salvador. El Salvador.

² UNDP El Salvador 2007. Deficiencias policiales, fiscales o judiciales en la investigación y juzgamiento causantes de impunidad. El Salvador.

³ Millennium Challenge Corporation. <http://www.mcc.gov/countries/index.php>

⁴ US Department of State. <http://www.state.gov/p/inl/ilea/>

Guatemala

Events of 2006

Twenty years after the return of civilian rule, Guatemala has made little progress toward securing the protection of human rights and the rule of law, essential features of a functioning democracy. Impunity remains the rule when it comes to human rights abuses. Ongoing acts of political violence and intimidation threaten to reverse the little progress that has been made toward promoting accountability in recent years.

Impunity

Guatemala continues to suffer the effects of an internal armed conflict that ended in 1996. A truth commission sponsored by the United Nations estimated that as many as 200,000 people were killed during the 36-year war and attributed the vast majority of the killings to government forces.

As Human Rights Watch has noted in the past, Guatemalans seeking accountability for these abuses face daunting obstacles. The prosecutors and investigators who handle these cases receive grossly inadequate training and resources. The courts routinely fail to resolve judicial appeals and motions in an expeditious manner, allowing defense attorneys to engage in dilatory legal maneuvering. The army and other state institutions fail to cooperate fully with investigations into abuses committed by current or former members. The police do not provide adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases.

Of the 626 massacres documented by the truth commission, only two cases have been successfully prosecuted in the Guatemalan courts. In 1999, a Guatemalan court sentenced three former civil defense patrol members to prison for the murders of two of the 177 civilians massacred in Rio Negro in 1982. In addition, in October 2005, the Supreme Court of Justice upheld the 2004 sentencing of a lieutenant and 13 soldiers to 40 years in prison for the 1995 Xaman massacre in which 11 civilians were killed.

By contrast, the prosecution of former military officers allegedly responsible for the 1982 Dos Erres massacre, in which at least 162 people died, has been held up for years by dilatory defense motions. Furthermore, the trial of six other civil defense patrol members, alleged to be complicit in the Rio Negro massacres, has been delayed since October 2004 because of defendants' appeals.

The few other convictions obtained in human rights cases have come at considerable cost. In the case of Myrna Mack, an anthropologist who was assassinated in 1990, it took more than a decade to obtain the conviction of an army colonel, Valencia Osorio, for his role in orchestrating the killing. During that time, a police investigator who gathered incriminating evidence was murdered, and two other investigators—as well as three witnesses—received threats and fled the country. Osorio, meanwhile, escaped police custody and has not served

his sentence.

The July 2005 discovery of approximately 70 to 80 million documents of the disbanded National Police, including files on Guatemalans who were murdered and “disappeared” during the armed conflict, could play a key role in the prosecution of those who committed human rights violations during the conflict. Unfortunately, there is no legal framework in place to ensure adequate long-term management of the archive, nor to regulate public access to its files.

Impunity remains a chronic problem with common crimes as well. The Guatemalan Human Rights Ombudsman’s Office estimates, for example, that arrests are only made in 3 percent of the cases involving murders of women and girls. The prosecution of those who commit violence against women is impeded by discriminatory legislation that prevents punishment for some violent crimes against women, and impunity is further fueled by deeply ingrained gender discrimination within the government agencies responsible for the investigation and prosecution of these crimes.

Frustration with the lack of justice in Guatemala has undoubtedly contributed to acts of vigilantism in the last several years. Public lynching is a common problem, with 25 lynching cases reported in 2004 and 32 in 2005. The majority of lynching victims were suspected of having committed a crime, but there has also been lynching in the past few years which was motivated by other factors, such as disputes over land or water.

Several steps have been taken by the Guatemalan government in 2006 to combat impunity, improve the justice system, and guarantee the rights of prisoners. In October 2006, Guatemalan President Oscar Berger approved a prison reform law (Ley del Regimen del Sistema Penitenciario), passed by Congress the previous month, which includes provisions setting up rehabilitation programs and schools within prisons.

Attacks and Threats by “Clandestine Groups”

Over the past five years, there has been an alarming number of attacks and threats against Guatemalans seeking justice for past abuses. The targets have included human rights advocates, justice officials, forensic experts, and plaintiffs and witnesses involved in human rights cases. They have also included journalists, labor activists, and others who have denounced abuses by the authorities. Guatemalan human rights organizations state that 161 such acts of violence or intimidation were reported between January and August 2006.

On April 2, 2006, Meregilda Súchite was murdered, apparently in connection with her work as a community leader and member of a women’s human rights group, which is supported by the Center for Legal Action in Human Rights (Centro para la Accion Legal en Derechos Humanos, CALDH). Members of the Guatemalan Foundation for Forensic Anthropology (Fundacion de Antropologia Forense de Guatemala, FAFG) continued to receive death threats in 2006, in connection with their work exhuming bodies buried in clandestine cemeteries throughout the country.

There is widespread consensus among local and international observers that the people responsible for these acts of violence and intimidation are affiliated with private, secretive, and illegally armed networks or organizations, commonly referred to in Guatemala as “clandestine groups.” These groups appear to have links to both government officials and organized crime—which give them access to considerable political and economic resources. The Guatemalan justice system, which has little ability even to contain common crime, has so far proven no match for this powerful and dangerous threat to the rule of law.

Excessive Use of Force

While political violence is no longer carried out as a matter of official state policy, members of the national police still sometimes employ excessive force against suspected criminals and others. The perpetrators are often poorly trained police officers. Between January and June 2005, there were 257 complaints made to the Guatemalan Human Rights Ombudsman’s Office for abuse of authority by police or prison guards and 18 complaints filed for extrajudicial killings by police or prison guards. For example, a transgender woman was murdered and another was critically wounded on December 17, 2005, when they were gunned down on a street in Guatemala City. Eyewitnesses reported that the gunmen were uniformed police officers.

Key International Actors

The UN High Commissioner for Human Rights opened an office in Guatemala in 2005 to provide observation and technical assistance on human rights practices. In February 2006, the office issued a report on human rights in Guatemala, expressing its concern over the current situation and urging the government to take a number of steps in order to combat violence and impunity, such as ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Efforts continue to secure the implementation of the 2004 agreement between Guatemala and the UN to establish a special commission to investigate and promote the prosecution of “clandestine groups.” The Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (Comision de Investigacion de Cuerpos Ilegales y Aparatos Clandestinos y de Seguridad, CICIACS) grew out of a proposal developed by the Guatemalan government and local human rights groups, in consultation with members of the international community. In 2004, Guatemala’s Constitutional Court held that several of the agreement’s provisions were unconstitutional. In May 2006, the Guatemalan government presented to the UN a revised version of the agreement. At this writing, the Guatemalan government and the UN are still negotiating the contents of the CICIACS agreement.

In a landmark ruling, Spain’s Constitutional Court held on September 26, 2005 that, in accordance with the principal of “universal jurisdiction,” cases of alleged genocide committed during Guatemala’s internal armed conflict could be prosecuted in the Spanish courts, even if no Spanish citizens were involved. On June 24, 2006, Spanish Judge Santiago Pedraz, a Spanish prosecutor, and two private prosecutors went to Guatemala to take testimony from the defendants. However, no testimony was given because the defendants filed numerous appeals, and the Guatemalan Constitutional Court suspended the proceedings indefinitely.

On July 7, 2006, Judge Pedraz issued international arrest warrants for eight Guatemalan defendants and issued an order to freeze the defendants' assets, both in Spain and internationally. In November, a Guatemalan court authorized the arrest of four of the defendants. At this writing, Spain had not yet sought extradition of the suspects from Guatemala.

The Inter-American human rights system continues to provide an important venue for human rights advocates seeking to press Guatemala to accept responsibility for past abuses.

<http://hrw.org/englishwr2k7/docs/2007/01/11/quatem14861.htm>

Also see:

The UN High Commissioner for Human Rights in Guatemala
<http://www.ohchr.org/english/countries/gt/index.htm>